

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

Case No. 5:22-cv-00042-M

DAVIE BETHEA,

Plaintiff,

v.

KILOLO KIJAKAZI,
Acting Commissioner of Social Security,

Defendant.

ORDER

Before the court are the parties' cross-motions for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure. DE 13, 16. Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b), United States Magistrate Judge Kimberly A. Swank entered a memorandum and recommendation ("M&R"), recommending that the court grant Plaintiff's motion, deny Defendant's motion, and remand the matter to the Commissioner for further proceedings. DE 18. To date, no objections have been filed.¹

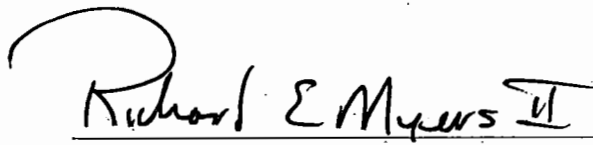
A magistrate judge's recommendation carries no presumptive weight. The court "may accept, reject, or modify, in whole or in part, the . . . recommendation[] . . . receive further evidence or recommit the matter to the magistrate judge with instructions." 28 U.S.C. § 636(b)(1); *accord Mathews v. Weber*, 423 U.S. 261, 271 (1976). The court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.* § 636(b)(1). Absent a specific and timely objection, the court reviews only for "clear

¹ Judge Swank issued the M&R on January 20, 2023. Objections were due to be filed on or before February 3, 2023. *See* DE 18. The parties' motions and M&R were submitted to this court for disposition on February 6, 2023.

error” and need not give any explanation for adopting the recommendation. *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

Upon careful review of the M&R and the record presented, and finding no clear error, the court ADOPTS the recommendation of the magistrate judge as its own. For the reasons stated therein, Plaintiff’s motion for judgment on the pleadings [DE 13] is GRANTED, Defendant’s motion for judgment on the pleadings [DE 16] is DENIED, and the matter is remanded to the Commissioner for further proceedings consistent with the M&R and this order. The Clerk of Court is directed to close this case.

SO ORDERED this 28th day of February, 2023.


RICHARD E. MYERS II
CHIEF UNITED STATES DISTRICT JUDGE